

NO. CR-03-1347

In The Court OF Criminal Appeals
OF Alabama

Carl Emmett Wyatt, Pro Se,
Appellant,
Vs.

CC-99-322.60

State OF Alabama,
Appellee.

Application For Rehearing
And Rule 39.5 Motion

Motion, Brief And Argument
cF Appellant.

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Issue For Review

Was the Memorandum by this Court on the issue of being forced to appear before the jury in prison clothing in direct conflict with clearly established case law? Yes!

Argument

Appellant contends that the Court did not address this issue by examining the factual allegations in the Rule 32 petition, but instead denied relief based upon "procedural bar" that had not been pleaded by the State in its "Motion To Dismiss" nor by the Trial Court in its ORDER denying the Rule 32 petition.

The Clearly established case law in which this Court's ruling is in direct conflict is:
Falkner v. State, 586 So.2d 39, at 42, this Court held;

"By not arguing laches as a basis of its 'Motion To Dismiss', the State in effect waived that ground of preclusion."

Ex Parte Williams, 571 So.2d 987, 989.

The state in its "Motion To Dismiss" attempted to argue the issue, the trial Court Concurred and the appellee for the first time raised the procedural bar issue in its Reply Brief at p.11.

An issue that has not been raised or preserved at the trial Court will not be reviewed on appeal.
See Falkner and Williams, *Supra*.

Wherefore, premises Considered, appellant moves this Hon. Court to grant this pro se motion and revisit the ruling in this case and remand this case to the Circuit Court to hold an evidentiary hearing on the issue of being forced to wear prison clothing in front of the jury.

Carl E. Wyatt
Carl Emmett Wyatt

Certificate of Service

I hereby certify that I have served a true and correct copy of the foregoing upon the Attorney General by placing the original and a copy in the prison mail box designated U.S. Mail Box on this the 15th day of October 2004, addressed to the Clerk of Criminal Court of Appeals at 300 Dexter Ave. Montgomery AL. 36130.

Carl E. Wyatt
Carl Emmett Wyatt